

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 44
Series of 2018

TITLE: A RESOLUTION APPROVING THE TERMINATION OF THE ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY, COORS BREWING COMPANY AND CABELA'S RETAIL, INC.

WHEREAS, Cabela's Retail, Inc., Coors Brewing Company and the City are the parties to that certain Annexation and Development Agreement dated December 20, 2004, and amendments thereto, (collectively, the "Development Agreement"), with respect to approximately 230 acres of real property located in the City of Wheat Ridge at the southwest corner of the intersection of Interstate 70 and Highway 58 (the "Property") then-owned or anticipated to be owned by Coors and Cabela's;

WHEREAS, the Property has been annexed into the City in accordance with the Development Agreement; and

WHEREAS, the development contemplated by the Development Agreement was never completed, and a new developer, Evergreen-Clear Creek Crossing, L.L.C., ("Evergreen") has purchased all Property owned by Cabela's ("Sold Property") and Cabela's has assigned to Owner all right, title, and interest in agreements relating to the Sold Property, including the Development Agreement; and

WHEREAS, Evergreen desires to develop the Sold Property, also known as Clear Creek Crossing, as a mixed-use commercial development project, which is in conflict with the proposed planned commercial district outlined in the Development Agreement; and

WHEREAS, the City has approved a revised Official Development Plan ("ODP") reflecting the proposed mixed-use commercial district, and the City and the Evergreen have negotiated the appropriate public improvements and other obligations of the Owner which are set forth in other agreements, including a Subdivision-Improvements Agreement; and

WHEREAS, the City, Coors and Evergreen agree that the Development Agreement should be terminated in order to avoid any confusion about the development of the Property.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows: The Termination of Annexation and Development Agreement, attached to this Resolution as **EXHIBIT A**, is hereby approved, and the Mayor and City Clerk are authorized and directed to execute the same.

Done and Resolved this 9th day of July, 2018, at Wheat Ridge, Colorado.

(Signature Appears on the Following Page)

CITY COUNCIL OF THE
CITY OF WHEAT RIDGE,
JEFFERSON COUNTY, COLORADO

By: *Bud Starker*
Bud Starker, Mayor

ATTEST:

Janelle Shaver
Janelle Shaver, City Clerk



EXHIBIT A
TERMINATION AND RELEASE OF ANNEXATION AND DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202
Attn: Judy Landrum

TERMINATION AND RELEASE OF ANNEXATION AND DEVELOPMENT AGREEMENT

THIS TERMINATION AND RELEASE OF ANNEXATION AND DEVELOPMENT AGREEMENT ("**Termination**") is entered into this 9th day of July, 2018, by and between EVERGREEN-CLEAR CREEK CROSSING, L.L.C., an Arizona limited liability company ("**Owner**"), as successor-in-interest to CABELA'S WHOLESALE, INC., a Nebraska corporation, who is the successor-in-interest to CABELA'S RETAIL INC., a Nebraska Corporation ("**Cabela's**", COORS BREWING COMPANY, a Colorado corporation, ("**Coors**") and THE CITY OF WHEAT RIDGE, a Colorado municipal corporation ("**City**").

RECITALS

WHEREAS, Cabela's, Coors and the City are the parties to that certain Annexation and Development Agreement dated December 20, 2004, and amendments thereto, (collectively, the "**Development Agreement**"), with respect to approximately 230 acres of real property located in the City of Wheat Ridge at the southwest corner of the intersection of Interstate 70 and Highway 58, as depicted in **Exhibit A** attached hereto and incorporated herein (the "**Property**") then-owned or anticipated to be owned by Coors and Cabela's;

WHEREAS, the Property has been annexed into the City;

WHEREAS, the development contemplated by the Development Agreement was never completed, and Owner has purchased all Property owned by Cabela's ("**Sold Property**") and Cabela's has assigned to Owner all right, title, and interest in agreements relating to the Sold Property, including the Development Agreement;

WHEREAS, in accordance with Section 14(g) of the Development Agreement, the City hereby consents to Cabela's assignment of the Development Agreement to Owner and releases Cabela's from all obligations thereunder;

WHEREAS, the Development Agreement serves as a covenant running with and encumbering and/or burdening the Property, with any provision of the Development Agreement deemed to include any purchaser, successor-in-interest or assign of any owner as to the Property;

WHEREAS, Owner desires to develop a portion of Sold Property known as Clear Creek Crossing as a mixed-use commercial development project, which is in conflict with the proposed planned commercial district outlined in the Development Agreement;

WHEREAS, the City has approved a revised Official Development Plan ("**ODP**") reflecting the proposed mixed-use commercial district, and the City and the Owner have

negotiated the appropriate public improvements and other obligations of the Owner which are set forth in other agreements, including a Subdivision Improvements Agreement ("SIA");

WHEREAS, the City, Coors and Owner therefore agree that the Development Agreement should be terminated in order to avoid any confusion about the development of the Property;

WHEREAS, in connection with the development of the Sold Property, the parties hereto, pursuant to Section 14(l) of the Development Agreement, have agreed to terminate and revoke all obligations set forth in the Development Agreement and release the Property, in its entirety, from the Development Agreement; and

WHEREAS, the City, Coors and Owner agree to terminate the Development Agreement in its entirety by and through this Termination.

NOW, THEREFORE, in consideration of the above premises and the covenants as hereinafter set forth, it is agreed by and among the parties as follows:

AGREEMENT

1. Incorporation of Recitals and Definitions. The Recitals set forth above are hereby incorporated into this Termination and made a part hereof by this reference. Capitalized terms used in this Termination and not otherwise defined shall have the meanings given such terms in the Development Agreement.

2. The City hereby forever releases and discharges Owner and Coors from any and all claims, demands or causes of action whatsoever against said owner, its successors and assigns, arising under or in connection with the Development Agreement and discharges any owner from any obligations to be observed or performed by any owner under the Development Agreement. The City reserves the right to claims, demands, or causes of action that may have arisen prior to this Termination. This Termination shall be binding on the City and its successors and assigns.

3. Owner and Coors hereby forever release and discharge the City from any and all claims, demands or causes of action whatsoever against the City, its successors and assigns, arising under or in connection with the Development Agreement and discharge the City from any obligations to be observed or performed by the City under the Development Agreement. The Owner and Coors reserve the right to claims, demands, or causes of action that may have arisen prior to this Termination. This Termination shall be binding on the Owner, Coors and any other owner of the Property and their successors and assigns.

4. Termination and Release. Effective as of the date hereof, the Development Agreement is hereby terminated and shall have no further force or effect as to the Property. Owner, Coors and City by their execution hereof, terminate the Development Agreement in its entirety. The parties hereto acknowledge and agree that upon termination, each party is released from its obligations under the Development Agreement and no further liability exists thereunder.

5. Representations and Warranties. The parties each represent and warrant to the other that such party has the full power and authority to enter into this Termination without the joinder or approval of any other person or entity and that the person executing this Termination on behalf of such party was duly authorized to do so.

6. Further Assurances. The parties each agree to perform any acts and/or execute any documents, including without limitation, executing, amending or supplementing any instrument to be executed hereunder, as may be reasonably requested by either party in order to effect the purposes of this Termination.

7. No Effect on Annexation Status of Property. The termination of the Development Agreement, as accomplished herein, shall have no effect on the status of the Property as annexed into the City.

8. Interpretation. Nothing in this Termination Agreement shall constitute or be interpreted as a repeal of the City's ordinances, resolutions or provisions of the Wheat Ridge Code of Laws, or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants.

9. Counterparts; Signatures. This Termination may be executed in any number of counterparts, each of which shall be an original, but all of such counterparts shall together constitute but one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the parties hereto. Signature pages may be detached and reattached to physically form one document.

10. Successors and Assigns. This Termination shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the respective parties hereto.

11. Applicable Law. This Termination shall be governed by and construed in accordance with the laws of the State of Colorado.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Termination to be effective on the date first written above.

OWNER:

EVERGREEN CLEAR-CREEK CROSSING, L.L.C.,
an Arizona limited liability company

By: Evergreen Development Company-2016, L.L.C.,
an Arizona limited liability company,
Its Manager

By: Evergreen Devco, Inc.,
a California corporation
Its Manager

By: [Signature]
Name: Tyler Carlson
Title: Executive Vice President

STATE OF Arizona)
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 13 day of August, 2018, by Tyler Carlson, as EVP of Evergreen Devco, Inc., a California corporation, as Manager of Evergreen Development Company-2016, L.L.C., an Arizona limited liability company, as Manager of Evergreen-Clear Creek Crossing, L.L.C., an Arizona limited liability company.



(SEAL)

WITNESS my hand and official seal.

[Signature]
Notary Public

My commission expires: January 15, 2021

[ADDITIONAL SIGNATURES ON THE FOLLOWING PAGES]

CITY OF WHEAT RIDGE

By: [Signature]
Bud Starker, Mayor

ATTEST

By: [Signature]
Office of City Clerk

APPROVED AS TO FORM

By: [Signature]
Gerald E. Dahl, City Attorney

STATE OF Colorado)
COUNTY OF Jefferson)

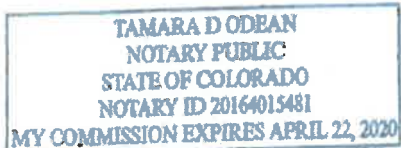
The foregoing instrument was acknowledged before me this 9th day of July, 2018, by Bud Starker, as Mayor of CITY OF WHEAT RIDGE.

WITNESS my hand and official seal.

(SEAL)

[Signature]
Notary Public

My commission expires: 4-22-20



[ADDITIONAL SIGNATURES ON THE FOLLOWING PAGES]

COORS BREWING COMPANY, a Colorado corporation

By: [Signature]

Name: Anne DeMarco

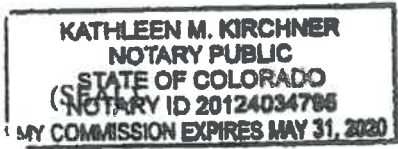
Title: Assistant Secretary

STATE OF Colorado)

COUNTY OF AND City of Denver)

The foregoing instrument was acknowledged before me this 7th day of August, 2018, by Anne DeMarco, as Assistant Secretary of COORS BREWING COMPANY.

WITNESS my hand and official seal.

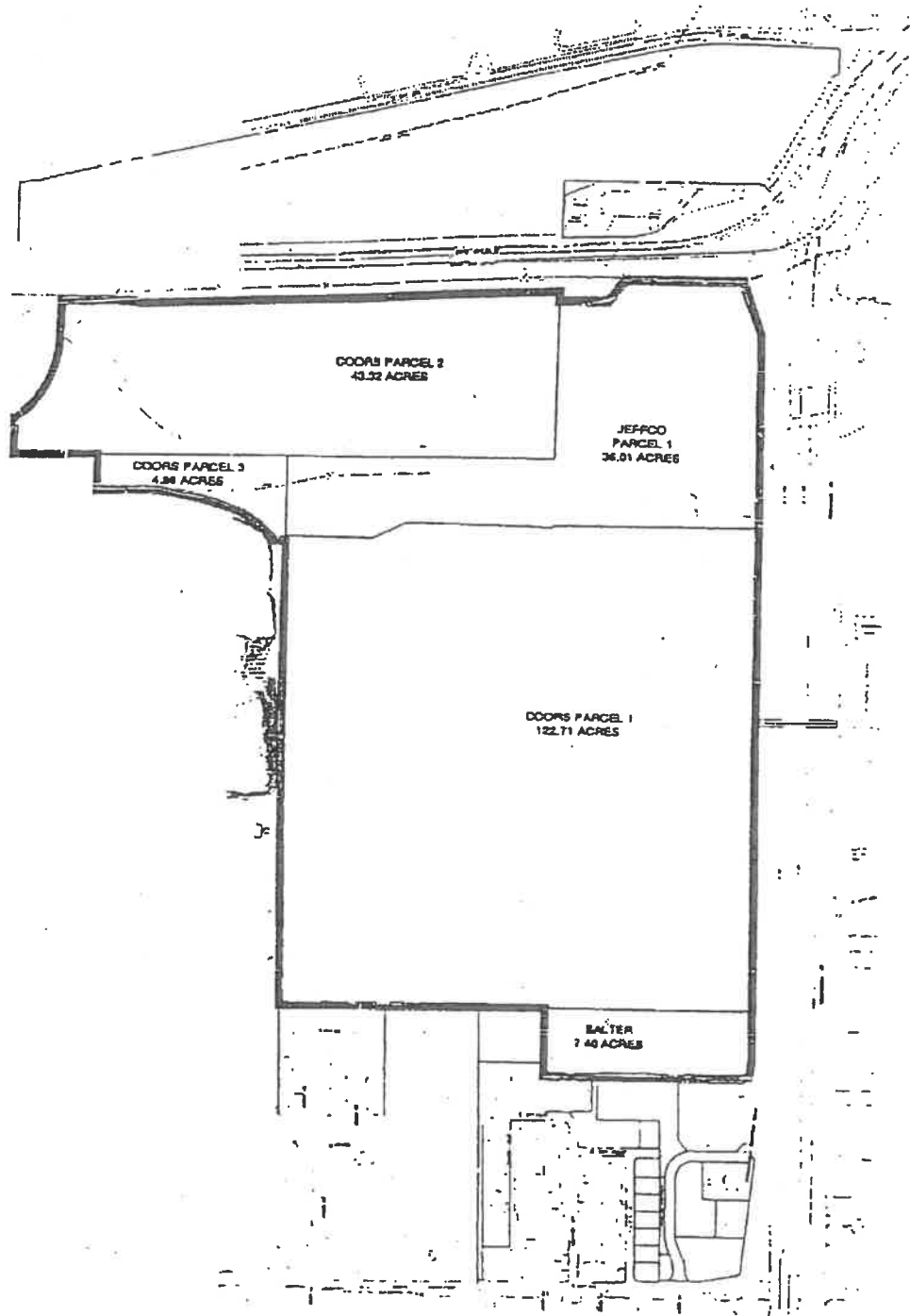


[Signature]
Notary Public



My commission expires: May 31, 2020


EXHIBIT A
Legal Description of Property

EXHIBIT A



LEGEND

-  BOUNDARY
-  PARCEL BOUNDARY

 **MART N. MARTIN**
CONSULTING ENGINEERS

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P.O. BOX 191800
LAKWOOD, CO 80218
303.431.8100
FAX 303.431.4088